

Serial No. 09/987,202 – Schuehmacher et al.

REMARKS

Claims 1-30 are pending. By this Amendment, the specification is amended and claims 12 and 16 are amended. Reconsideration in view of the above amendments and following remarks are respectfully requested.

Claim 12 was rejected under 35 U.S.C. §112, second paragraph. Claim 12 has been amended in accordance with the suggestion of the Office Action. Reconsideration and withdrawal of the rejection are respectfully requested.

As noted on page 5, paragraph number 7 of the Office Action, claim 16 has been amended to depend from claim 15.

Claims 1, 2, and 26 were rejected under 35 U.S.C. §102(e) over Yatagai et al (U.S. Patent 6,561,297) and claim 27 was rejected under 35 U.S.C. § 103(a) over Yatagai et al. The rejections are respectfully traversed.

The undersigned respectfully notes that the disclosure of Yatagai et al. is already of record in the instant application by virtue of the citation of the published application, US 2002/0027029 A1, on the PTO-892 accompanying the November 28, 2002 Office Action. (See Paper No. 4.) The application of Yatagai et al. against the claimed invention at this late date is rendered moot, however, by the perfection of Applicants' claim of priority to U.S. Application 60/247,052, filed November 13, 2000. In accordance with the suggestion of the Office Action, a petition under 37 C.F.R. § 1.78(a)(6) for acceptance of Applicants' claim of priority is being filed concurrently with this Amendment. Therefore, Applicants have established a date of invention, at the latest, of November 13, 2000, which is prior to Yatagai et al.'s August 10, 2001 U.S. filing date. Yatagai et al. are not prior art to the instant

Serial No. 09/987,202 – Schuehmacher et al.

application. Applicants reserve the right to establish a date of invention prior to November 13, 2000, should it be necessary.

It is respectfully submitted that the examiner's reliance on the rationale used by the court in In re Japikse is improper and inapplicable for all the reasons previously discussed throughout the lengthy prosecution of the instant application and irrelevant as Yatagai et al. are not prior art.

Reconsideration and withdrawal of the rejections of claims 1, 2, 26 and 27 over Yatagai et al. are respectfully requested.

Claims 1, 2, 5, 6, 15 and 16 were rejected under §103(a) over Atsuumi et al. (U.S. Patent 6,454,037) in view of Minami et al. (U.S. Patent 4,475,617)

As discussed above, Applicants have established a date of invention of at least November 13, 2000. Applicants' date of invention is prior to Atsuumi et al.'s U.S. filing date of November 22, 2000. Accordingly, Atsuumi et al. are not prior art under any section of 35 U.S.C. § 102. As Atsuumi et al. are not prior art, the combination of Atsuumi et al. and Minami et al. fails to present a *prima facie* case of obviousness.

Reconsideration and withdrawal of the rejection of claims 1, 2, 5, 6, 15 and 16 over Atsuumi et al. in view of Minami et al. are respectfully requested.

Claims 3 and 7 were rejected under 35 U.S.C. § 103(a) over the combination of Atsuumi et al. in view of Minami et al. and further in view of Roetgen et al. (U.S. Patent 4,565,177); claims 4 and 13 over the combination and further in view of Roetgen et al. and Middlebrook (U.S. Patent 6,293,264); claims 8-10 over the combination and further in view of Roetgen et al. and Fields et al. (U.S. Patent 4,249,626); claim 24 over the combination and further in view of Sokolowski (U.S. Patent 5,598,820); and claim 25 over the combination

Serial No. 09/987,202 – Schuehmacher et al.

and further in view of Marier et al. (U.S. Patent 5,660,245). The rejections are respectfully traversed.

As Atsuumi et al. are not prior art, none of the combinations discussed above present a *prima facie* case of obviousness.

Reconsideration and withdrawal of the rejections are respectfully requested.

Applicants appreciate the indication that claims 11, 12, 14, 17-23 and 28-30 define patentable subject matter. However, in view of the above amendments and remarks, it is respectfully submitted that all of the claims are allowable and that the entire application is in condition for allowance.

Should further issues require resolution prior to allowance, the examiner is requested to telephone the undersigned.

Respectfully submitted,

PILLSBURY WINTHROP LLP

By: 

John P. Darling

Reg. No: 44,482

Tel. No.: (703) 905-2045

Fax No.: (703) 905-2500

JPD/bhs
P.O. Box 10500
McLean, VA 22102

(703) 905-2000